IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO No. 23 of 1994 & RFA No. 21 of 1994
Reserved on: 20.07.2006
Decided on: 3rd. August,2006

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1. FAO No. 23 of 1994

   Surinder Singh Sibia vs State of H P

2. RFA No. 21 of 1994

   State of H P & another vs Surinder Singh Sibia

Coram:

The Hon'ble Mr.Justice Deepak Gupta, J.

Whether approved for reporting ?[1]

For the Appellant: **Mr Bhupender Gupta, Senior Advocate, assisted by Mr Neeraj Gupta, Advocate.**

For the Respondent **Mr M S Chandel, Advocate General, assisted by Mr J S Guleria, Law Officer.**

Deepak Gupta, J.

This judgment shall dispose of two cross appeals, being FAO No.23 of 1994 and RFA No. 21 of 1994, as they arise out of the same award.

Brief facts necessary for the decision of the case are that Surinder Singh Sibia, appellant in FAO No.23 of 1994, is the owner of the property known as ***"Kenilworth".*** This property consists of a

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

residential house, servant quarters, kitchen, garage, court yard and lawns appurtenant thereto.

This property was requisitioned, under the H P Requisitioning and Acquisition of Immovable Property Act, 1972, for the residence of a Judge of this Court. The requisition came into effect from 30.07.1979. There is no dispute with regard to the fact that this requisition was valid for a period of five years, at the first instance, and also that the landlord had agreed to accept Rs.1799.75 paise per month, as rent of the property. After expiry of five years, the landlord was offered enhanced rent at the rate of Rs.3600/- per month with effect from 1.8.1984, which he refused to accept and claimed that compensation/rent should be much higher. The Judge, who was occupying the premises, demitted office on superannuation on 27.2.1988. The landlord illegally took possession of the house on 27.3.1988. There was some dispute between the High Court and the landlord with regard to the possession of the property. The possession was restored to the High Court on 25.6.1987.

It would not be out of place to mention here that the original Act of 1972 was only valid for a period of 10 years i.e. up to 28.7.1982. Thereafter, the Act had lapsed. Subsequently the State of Himachal Pradesh

promulgated the Himachal Pradesh Requisition of Immovable Property Ordinance 1987. Thereafter the H P Requisition of Immovable Property Act was enacted which was given retrospective effect from 28th July, 1983.

The compensation payable to the landlord /owner of the property, whose premises are requisitioned, under the aforesaid Act, has to be assessed in terms of Section 9 of the Act. Section 9(1)(b) which is relevant for the purpose of deciding the present appeal reads thus:

> 9.(1)Where any property is requisitioned under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say—
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> (a) ---------
>
> (b) where no such agreement can be reached, the Government shall appoint as an arbitrator a person who is or has been or is qualified for appointment as a Judge of a High Court.
>
> (c) _____
>
> (d) _____
>
> (e) _____
>
> (f) _____

(g) _____

Section 10 of the Act provides for payment of interest in the following terms:

10(1) The amount of compensation payable under an award shall, subject to any rules made under this Act, be paid or given by the competent authority to the person or persons entitled therein such manner and within such time as may be specified.

(2) An interest at the rate of 9 per centum per annum shall be payable on the amount of compensation or any part thereof from the date of order of requisition made by the competent authority under section(2) of section 3 till the date the amount stands paid or tendered"

Provided that where such compensation or part thereof is not paid or tendered within one year from the date it becomes due, interest at the rate of 15 percentum per annum shall be payable for the period exceeding one year."

Explanation I.- For computing interest under this sub-section, the

> amount paid as provisional compensation under sub section (3) of section 4, if not already reduced while making the award, shall be deducted from the amount of compensation payable under the award.
>
> Explanation II.For the removal of doubts it is clarified that tender of amount of compensation to the persons entitled thereto shall, without prejudice to other provisions of this Act, be deemed to be the payment of compensation to the persons interested therein, for the purposes of this sub-section.

Section 13 provides that any person, aggrieved by the award of the arbitrator, may prefer an appeal to the High Court.

The only question raised in this appeal is with regard to the rate of compensation/rent and the interest thereupon. There is no dispute with regard to the fact that the built up area of the property consists of 8,889.94 sq.ft. and the open land attached to the building in the form of lawn, plinth protection etc. measures 12149 sq.feet. The dispute with

regard to rate of rent can be divided into two separate periods. The first block is for the period 29.8.1984 to 28.8.1989 and the second block is from 29.8.1989 to 28.7.1993, where after the premises were handed over to the landlord. The learned Arbitrator has assessed the compensation/rent at the rate of Rs.2.00 per sq.ft. per month, for the built up area and Rs.0.40 paise per sq.ft. per month for the open area for the First five years and Rs.2.25 per sq.feet per month, for the built up area and Rs.0.50 paise per sq.feet per month, for the open area for the second block.

Both the appellant/Landlord as well as the State being aggrieved by the award of the Arbitrator have filed these two appeals.

I have heard Mr Bhupender Gupta, learned Senior Advocate for the landlord and Mr. M S Chandel, learned Advocate General assisted by Mr. J S Guleria, learned Law Officer for the State-respondent.

Before the Arbitrator, the parties filed their pleadings and led evidence. The claimant in his claim, claimed compensation for the first five years block at the rate of Rs.2.50 per sq.ft. per month for the covered area and 0.75 paise per sq.ft. per month for the open land

and for the second block at the rate of Rs.3.50 per sq.ft. per month, for the built up area and Rs.1.75 paise per sq.ft. per month for the open land.

The State filed its reply and according to the State, rent at the rate of Rs.1799.75 had been paid to the landlord up to 31.12.1992 and thereafter provisional rent at the rate of Rs.10,000/- per month was paid, as per directions of the apex Court. The State was, however, ready and willing to pay rent at the rate of Rs.3,600/- per month. The parties led evidence.

The landlord appeared as his own witness as PW-1 and stated that his property was only about 250 yards away (down) from the Mall Road, just behind the official residence of the Chief Minister of the State. The witness admitted that at the time of requisitioning of the premises, he had accepted the rent of Rs.1,799.75 paise, subject to the condition that it would be enhanced in due course of time.

PW-2 S P Kapoor is the expert witness produced by the claimant. He is a retired Superintending Engineer. He has assessed the rental value of the building and has submitted reports, which are Exts.PD, PE and PF. The

witness has assessed the rental value of the built up area of the property for the first five years block at the rate of Rs.2.35 per sq.feet, per month and for the subsequent block he has assessed the rent at the rate of Rs.3.08 per sq.feet per month. In cross-examination he has admitted that prior to the requisitioning of the property, the ground floor of the premises along with the open area was under the tenancy of the Justice T R Handa in his personal capacity, at a monthly rent of Rs.350/- per month.

PW-4 has produced the records from the office of the Deputy Commissioner, Shimla. He has proved various letters being Exts.PW-4/A to PW-4/K, which show the rents approved by the Deputy Commissioner, Shimla, for different buildings.

PW-5 has produced records of various assessments of the rent made by the PWD authorities and exhibited as PW-5/A to PW-5/M.

Respondent-State examined one Sh. Arun Mahajan, Executive Engineer, who has assessed the rent of the premises @ Rs.9,335/- per month for the period from 1984 to 1989 and thereafter at the rate of Rs.10020/- per month from 1989 to 1993. It would now be relevant to

refer to the various documents relied upon by the parties.

Ex.PD, has been prepared by Sh. S P Kapoor, on the basis of the buildings rented out in the year 1981 in Jakhu area, at the rate of Rs.1.62 per sq.feet, per month. He has taken into account increase in rent @ 5% per annum and has opined that in case the flats had been rented out in 1984, then rent would have been 1.88 per sq.feet, per month. He has given further increase of 10% on account of the fact that building in question is approachable by a motorable road. He has also increased rent by another 15% on account of the fact that "Kenilworth" has open space, garden, lawn, garage and servant quarters etc. and keeping in view all these facts, he has assessed rental value at the rate of Rs.2.35 per sq.ft. per month as on 1.4.1984. For the year 1989, he has relied upon some instances of the buildings, rented out in the same area as "Kenilworth" and assessed rent at the rate of Rs.2.68 per sq.feet, per month and has granted increase of 15% because of additional facilities available in the Kenilworth and has assessed the rent of the built up area to Rs.3.08 per sq.feet per month.

It would be pertinent to mention here that the instances of rent transactions, on which Exs. PD and PE are based, have neither been placed on record nor have been proved to show that as to what was the area rented out, what was the total rent fixed and further how and what rent per sq.feet per month was fixed.

In my opinion, the expert while filing his report should in all fairness have appended therewith the rent agreements, showing the rate of rent, the area rented out and how the rent per sq.feet per month has been worked out. Without the original rent agreements having been proved or placed on record, the assessment made by this expert is virtually meaningless and cannot be relied upon.

It has been urged by Mr Bhupender Gupta, learned Senior Advocate, that since the expert has not been examined with regard to the veracity of the instances mentioned by him, report of the expert should be accepted. I am unable to accept this argument because when any expert gives a report he must support it with the relevant material and the documents on which he relies upon while making the report. Merely making a mention of the instances without bringing on record the facts whether

buildings were old or new, whether they were rented for commercial or residential purposes, what was their exact location etc. is not sufficient to make the report binding on any Tribunal. A Judicial authority must be satisfied that the report of an expert is based on some tangible evidence and relevant material before reliance can be placed on such a report. I have also given other reasons hereinafter for not accepting the report of the expert.

First Block from 29.8.1984 to 28.9.1989

Various documents have been relied upon by the appellant in addition to the report of the expert for the purpose of assessing the market rent. The documents are Exs.PW-4/A to PW-4/K which are the approval of the assessed rent by the Deputy Commissioner and Exs.PW-5/A to 5/L are the assessments of rent of various properties made by the HPPWD. The charts showing the date of assessment, rate of assessment and location of the building are appended to this judgment as Annexures-A and B. A perusal of these Charts will show that as far as the Deputy Commissioner is concerned, he has not assessed any rent in the year 1984. As far as the assessment made by the HPPWD authorities

are concerned, the only building assessed in the year 1984 is the building of Rajkiya Kanya Maha Vidayla wherein the rate of rent works out to less than 10 paise per sq.ft. In fact, in my opinion, this may not be a relevant document since one can take the judicial notice of the fact that prior to the Govt. College being run in the premises a private college was being run in those premises, which college has been taken over by the State Government. All the other assessments relate to period after 1984. Therefore, in my opinion these documents cannot be relied upon.

That leaves the court with only the statement of the expert coupled with the statement of the claimant and the assessment made by RW-1. It would be pertinent to mention that the claimant on 9.7.1979/10.7.1979 vide Annexures RA and RB, respectively had stated that he had no objection, for his house being requisitioned and voluntarily accepted the rent determined by the P.W.D. at Rs.1799.75 per month. The expert based his opinion for fixing the rent for the year 1984 on the rent paid by the State of Himachal Pradesh to three flat owners for accommodating the offices of D.I.G Police (Enforcement) at City View Estate,

Jakhoo, Shimla in the year 1981, @ 1.62 per Sq.ft. per month. He has further added 5% increase in the rent per annum on the basis of inflation of rent. If this was the mode of assessment, he was to adopt, I see no reason why he could not have applied a 5% increase per annum to the rent of Rs.1799.30/- per month admittedly accepted and agreed to by the appellant Sh. Sibia. In my opinion the report of the expert was not based on any proper data. Further more in this report the expert has not mentioned whether the flats taken on rent by the State Government were in newly constructed buildings or old buildings. Obviously, the rental value of a new building will be much higher as compared to the rent for an old building. The fact that rental value of a newly constructed building is higher than the rental value of an old building is also apparent from Chart Annexure-B which clearly shows that whereas the old buildings have been rented out at very low rates, the buildings at Sr.Nos.2,4 and 11 which were newly constructed buildings were rented out at a higher rate. Admittedly, the building in the present case is an old construction and could not have fetched

the rent at which newly constructed buildings were rented out.

The expert has also not taken into consideration the fact that in all three instances relied upon by him the flats had been hired for commercial purpose. Rent for an office or a shop will be higher than the rent payable for a residential house. There can be no comparison between the same. The expert in his evidence has also admitted that prior to the premises being requisitioned the ground floor and open area was in possession of Justice Handa in his personal capacity as a private residence at monthly rental of Rs.350/- per month. This fact has conveniently been ignored while assessing the rent.

I also find that the expert has erred in holding that increase of 15% should be given while assessing the rental value of Kenilworth as compared to the flats since Kenilworth is surrounded by lawns and has the facility of servant quarters, garages etc. The expert did not take into consideration the fact that for these lawns and garden separate rent was being assessed by the arbitrator. The appellant could not have been given rent for the open area twice; once by giving premium while fixing the

rental value of the premises and again by giving him rent for the open area. It will be pertinent to mention here that the expert while assessing the rent of the built up portion of Kenilworth has assessed the rent at a uniform rate, without taking into consideration the fact that out of total built up area of Kenilworth 25% of the built up area was in the nature of rickshaw shed, servant quarters, garage, out houses etc. which in no event could have fetched the same rent per sq.ft., as the main building.

From the above discussion, it is clear that the report of the expert cannot be relied upon. The appellant has not led any cogent evidence to prove that what was the rental value of the premises in the year 1984. It was for the Petitioner-appellant to prove his case that what was the market value of the land in the year 1984. As mentioned above, no instance of the year 1984 has been proved and the instances relied upon by the expert have no relevance.

RW-1 Arun Mahajan has assessed the rent of the premises @ Rs.9335/- per month for both the floors, as per PWD norms. These norms had been accepted by Sh.Sibia when the premises

initially were requisitioned. Keeping in view the fact that there is no other cogent or reliable material on record and since I have discarded the report of the expert, this is only reliable evidence on record and relying upon it the rent of the built up area for the first five year block from 29.8.1984 to 28.8.1989 is fixed at Rs.9,335/- per month. However, it may be clarified that in the appeal filed by the State, no challenge has been made to the award of the Arbitrator with regard to the assessment of rent for the open land. Therefore, in addition to the rent assessed by Mr Arun Mahajan, the appellant shall be entitled to 0.40 paise per sq.ft for the open area measuring 12149 sq.feet.

Second Block from 29.8.1989 to 28.7.1993.

As far as this Block is concerned, the appellant has led evidence to prove the rental value of buildings in the surrounding area. On 7.12.1987 as per Ex.PW-4/A "ARSH" building at Stokes Place, which is close to Kenilworth, was taken on rent @ Rs.1.90 per Sq.ft. Similar rate was fixed for Kay Kay House as per Ex.PW-4/B. This house is situated near Tara Hall School, Kaithu, Shimla and

the appellant's property is definitely located at a much better situation. On 10th May,1988 vide Ex.PW-4/C, market rent of the buildings known as Hotel Yadgar and Hotel Fingask in Fingask Estate, Shimla, was assessed @ Rs.2.25/- and Rs.2.20/- inclusive of municipal taxes per sq.ft. per month. Though Fingask Estate is at other end of the town but it is a commercial area, as compared to the area where premises of the appellant are situated.

On 27th January, 1989, the Deputy Commissioner, Shimla, vide Ex.PW-4/E, fixed the rent of Krishna Cottage, Nabha House,Shimla-4, @ Rs.2.00/- per Sq.ft. per month inclusive of municipal taxes. As compared to the prime location of Kenilworth, Krishna Cottage is situated in the suburb of Nabha and the location of Krishna Cottage is not at all comparable and is of much lower value than the premises of the appellant. On 9.11.1990 rent of a portion of Udyog Bhawan was assessed by the Deputy Commissioner, Shimla, @ 3.15 per sq.ft. per month i.e. at 25% over and above the rate of Rs.2.52/- per sq.ft. per month recommended by the PWD authorities. However, an important factor to be noticed is that this recommendation was made on the basis that

Industry Department was giving this building to the Nathpa Jhakri Project Corporation fully furnished.

Reliance is placed by Mr Gupta, learned Senior Advocate on the document Ex.PW-4/G dated 6.12.1990 vide which the Deputy Commissioner, Shimla, recommended the rent @ Rs.7.50 per Sq.ft. per month for the two floors in Udyog Bhawan. With regard to this building which is situated just below the High Court, it is also apparent that two floors of Udyog Bhawan were being rented out to house the offices of NJPC. The premises were being rented out for a commercial purpose. Further more it is apparent that the premises were rented out fully furnished. Therefore, this assessment in my opinion cannot be taken into consideration.

On 22nd June,1991 vide Ex.PW-4/H premises known as ARSH at Stokes Place in the vicinity of Kenilworth were assessed at Rs.2.50/- per sq.ft. per month.

The expert Sh. S P Kapoor, produced by the petitioner-appellant has assessed the rent from the year 1989 @ Rs.3.08 per Sq.ft. per month. While doing so, he has relied upon four instances. All the four instances relate to the same locality as Kenilworth building and rent

in the year 1988-89 was fixed @ Rs.1.98, 1.94, 2.27 and 2.60 respectively per sq.ft. per month. Again, the expert has added 15% increase for the open area and lawn though he himself mentioned in his report that out of four instances quoted by him it was only in two instances that there was no open space or garden. Similar shortcomings are there in this report also. None of the documents relied upon by the expert have been placed on record. In all the cases the premises appear to have been rented out for commercial purposes. In all the cases, the expert has assessed the value by giving 15% increase for open area. He has not taken into consideration the fact that rent for the open area has to be assessed separately.

From the evidence on record it is apparent, that the rents were increasing in the area from 1987 onwards. Various buildings had been rented out at rents ranging from Rs.1.90 per Sq.ft to Rs.2.50 per Sq.ft. per month. Taking into consideration all the factors, I feel that the award of the Arbitrator assessing the rent of the built up area at Rs.2.25 per sq.ft. for the second block from 29.8.1989 to 28.7.1993 is just and reasonable and calls for no interference. I also uphold the award of the

Arbitrator for the open area @ 0.50/- paise per sq.ft. per month.

While awarding interest, the Arbitrator has totally ignored the statutory provisions of Section 10 of the Act,1987. Interest has to be paid @ 9% per annum from the date of requisition till the amount stands paid or tendered. It is further provided that if the amount is not paid within one year from the date it becomes due, interest at the rate of 15% shall be payable for the period exceeding one year. The Arbitrator has granted interest @ 10% per annum from 17.06.1993, the date of institution of the proceedings. This is not in accordance with law. The claimant-appellant is entitled to interest at the statutory rate fixed from the date it fell due till its payment. To make it clear, rent has been initially fixed from 29.08.1984 onwards. Rent for the month of September can be legitimately held to have fallen due in October. Therefore, the claimant shall be entitled to interest for the rent payable for the month of September @ 9% per annum from 01.10.1984 till 30.09.1985 and thereafter @ 15% per annum till its payment /deposit. Each month's rent and interest shall be calculated accordingly. Needless to say, the

payments/deposits made towards rent/ compensation shall be taken into consideration in accordance with Explanation 1 and 2 of Section 10 of the Act.

In view of the above discussion, both the appeals are disposed of by holding that the landlord is entitled to rent /compensation from 29.08.1984 to 28.08.1989 @ Rs.9,335/- per month for the built up area and 0.40 paise per sq.ft. per month for the open area. The appellant-petitioner is further held entitled to rent / compensation @ Rs.2.25/- per sq.ft. per month for the built up area from 29.08.1989 to 28.07.1993 and @ of Rs.0.50/- per Sq.ft. per month for the open area for this period. I uphold the finding of the learned Arbitrator that the landowner is not entitled to any rent for the period from 25.3.1987 to 26.6.1987 since he remained in illegal possession of the premises during this period. Rent/compensation, if any, paid to him for this period shall be set off against the amount due to him.

Both the appeals are disposed of in the above terms.

No costs.

August 3, 2006 (Deepak Gupta),J.

(D)

Annexure-A
Rent Assessed by the Deputy Commissioner, Shimla

Sr No.	**Date**	**Exhibit**	**Location**	**Area**	**Rent assessed**	**Rate per sq.ft.P.M**
1.	7.12.1987	Ex.PW-4/A	Arsh at Stokes Place near Kenilworth			1.90
2.	20.1.1988	Ex.PW-4/B	Kay Kay House near Tara Hall,Kaithu,Shimla			1.90
3.	10.5.1988	Ex.PW-4/C	Hotel Yadgar & Hotel Fingask, Fingask Estate,Shimla			2.25 & 2.20
4.	22.9.1988	Ex.PW-4/D	7^{th},8^{th} & 9^{th} floor of Capital Hotel,Shimla			1.90
5.	27.1.1989	Ex.PW-4/E	Krishna Cottage, Nabha House,Shimla			2.00
6.	9.11.1990	Ex.PW-4/F	Udyog Bhawan, below High Court			2.52
7.	6.12.1990	Ex.PW-4/G	Udyog Bhawan, below High Court			7.50
8.	22.6.1991	Ex.PW-4/H	Arsh at Stokes Place near Kenilworth			2.50
9.	July,1991	Ex.PW-4/J	Sun-rise Cottage, Housing Colony Ram Chander Chowk			3.00
10.	9.1.1992	Ex.PW-4/K	Dyerton Estate, Talland, Shimla			2.25

ANNEXURE-B
RENT ASSESSED BY THE PWD AUTHORITEIS.

Sr.No	Date	Exhibit	Location	Area	Rent Per Month	Rate per Sq.Ft.per month
1.	30.7.1984	Ex.PW-5/A	Lakkar Bazar	28442	RS.2382/-	Rs.0.08
2.	27.6.1990	Ex.PW-5/B	Bhagwati Niwas, Chakkar	39.85 sq.mt=428.78	Rs.785/-	Rs.1.83
3.		Ex.PW-5/C	Tutikandi, Shimla	300 sq.ft	Rs.150/-	Rs.0.50
4.	2.7.1991	Ex.PW-5/D	Summer Hill, Shimla	110.83 sqm=1192.53 sq.ft	Rs.2722/-	Rs.2.28
5.	13.5.1985	Ex.PW-5/E	Police Line Kaithu	352.93 sq.ft	Rs.50/-	Rs.0.14
6.	16.4.1989	Ex.PW-5/F	Police Line, Kaithu	586.5 sq.ft	Rs.222/-	Rs.0.38
7.	31.10.1988	Ex.PW-5/G	Summer Hill	17.55 sq.mt=188.84	Rs.125/-	Rs.0.66
8.	5.11.1988	Ex.PW-5/H	Totu	19.24 Sq.mt.=207.02	Rs.130/-	Rs.0.63
9.	20.3.1989	Ex.PW-5/J	Tutikandi	60.92 sq.mt=655.50	Rs.420/-	Rs.0.64
10.	27.4.1989	Ex.PW-5/K	Summer Hill	29.05 sq.mt =312.58	Rs.250/-	Rs.0.80
11.	1992-93	Ex.PW-5/L	Summer Hill.	106.01 sq.mt=1140.67	Rs.2935/-	Rs.2.57